

## INTERIM AGREEMENT

BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
METROPOLITAN GOVERNMENT OF NASHVILLE AND  
DAVIDSON COUNTY, TENNESSEE

DJ# 204-71-43

1. Metropolitan Government of Nashville and Davidson County, Tennessee ("Metropolitan Government") initiated this matter in January 2000 when it voluntarily contacted the United States Department of Justice ("Department of Justice") to discuss its plans for achieving compliance with Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12134, as implemented by regulations at 28 C.F.R. Part 35 ("Title II"), and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, as implemented by regulations at 28 C.F.R. Part 42, Subpart G ("Section 504").

2. Title II of the ADA prohibits discrimination on the basis of disability in all of the services, programs, and activities provided or conducted by States and local governments, including employment. 42 U.S.C. § 12132. Section 504 prohibits discrimination on the basis of disability in programs and activities that receive federal financial assistance. 29 U.S.C. § 794. Both statutes apply to Metropolitan Government because it is a public entity under the ADA, and a recipient of federal funds under Section 504. 42 U.S.C. § 12131 (1); 29 U.S.C. § 794(b).

3. The Department of Justice is authorized under 28 C.F.R. Part 35, Subpart F, and 28 C.F.R. § 42.530, to determine the compliance of Metropolitan Government with Title II and Section 504, issue findings, and where appropriate, negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized to bring a civil action enforcing Title II and Section 504, and/or suspend or terminate Metropolitan Government's federal funding, should the Department fail to secure voluntary compliance. 42 U.S.C. § 12133; 29 U.S.C. § 794a(a)(2).

4. The scope of this Agreement is limited to Metropolitan Government's responsibility to comply with the following specific provisions of the ADA and Section 504, with respect to Metropolitan Government's programs, services, and activities specifically identified in this Agreement:

- (a) designation of responsible employees to coordinate its compliance (28 C.F.R. § 35.107(a); 28 C.F.R. § 42.505(d));
- (b) provision of public notice of the ADA and Section 504 requirements (28 C.F.R. § 35.106; 28 C.F.R. § 42.505(f));

- (c) establishment of a grievance procedure to resolve complaints arising under the ADA and Section 504 (28 C.F.R. § 35.107(b); 28 C.F.R. § 42.505(e));
- (d) self-evaluation of current services, policies, and practices to identify and correct any that are not consistent with the ADA and Section 504 (28 C.F.R. § 35.105; 28 C.F.R. § 42.505(c)); and
- (e) preparation of a transition plan if structural changes to existing facilities are necessary for achieving program accessibility (28 C.F.R. § 35.150(d); 28 C.F. R. §42.521 (d)).

5. This Agreement is intended to be followed by final agreements on Metropolitan Government's transition plans.

6. This Agreement does not include the following separate legal entities: the Metropolitan Development and Housing Authority (MDHA), the Metropolitan Nashville Airport Authority (MNAA), the Nashville Electric Service (NES), the Sports Authority of the Metropolitan Government of Nashville and Davidson County, or the Metropolitan Nashville Hospital Authority.

7. For purposes of this Agreement, Metropolitan Government and the United States of America hereby agree as follows:

A. ADA Coordinators

8. Metropolitan Government has created and agrees to maintain the position of "ADA Coordinator," attached to the Mayor's Office and placed under the Mayor's direction and control, in order to plan and coordinate Metropolitan Government's overall compliance with the ADA and Section 504. The ADA Coordinator's specific responsibilities include, but are not limited to, drafting the notice and the grievance procedure; investigating grievances relating to Metropolitan Government's compliance with the statutes in its programs, services, and practices; facilitating effective communications; involving people with disabilities and other interested parties in the compliance process; conducting Metropolitan Government's self-evaluation; and preparing its transition plan.

9. Within thirty (30) days of the effective date of this Agreement, each agency or department of Metropolitan Government will designate an individual to perform the duties of a "departmental ADA coordinator", who will work in concert with, at the direction of and under the supervision of the ADA Coordinator to accomplish the purposes set forth in paragraph 8. The departmental ADA coordinators will submit quarterly reports to the ADA Coordinator so that the departments' compliance efforts can be properly documented and monitored. Each department's initial quarterly report will be submitted to the ADA Coordinator no later than October 1, 2000.

10. Within sixty (60) days of the effective date of this Agreement, Metropolitan Government will develop and provide the Department of Justice with a list of all of its agencies and departments, and identify the employee within each department that Metropolitan Government has designated as a departmental ADA coordinator. This list shall be identified as "List of Metropolitan Government ADA Coordinators" and shall be attached to and become part of this Agreement. Should the duties of any departmental ADA coordinator be reassigned to someone other than the individual identified on the List of Metropolitan Government ADA Coordinators, the ADA Coordinator will notify the Department of Justice by including an amended List in the periodic written compliance reports referenced in paragraph 33.

**B. Notice of ADA and Section 504 Requirements**

11. Metropolitan Government agrees to make available to applicants, employees, participants, beneficiaries and other interested persons information regarding the requirements of the statutes and their applicability to Metropolitan Government's programs, services, and activities, and to make such information available to them in whatever manner may be necessary (including alternative formats) to apprise such persons of the protections against discrimination assured them by the statutes and their implementing regulations. This notice will also apprise the public of the appointment of the ADA Coordinator (and any departmental ADA coordinator), as well as his or her name(s), office addressees) and phone number(s).

12. Within ninety (90) days of the effective date of this Agreement, after consulting with the head of each department and any departmental ADA coordinator, the ADA Coordinator will determine the most effective method for making the community aware of their rights and protections under the ADA and Section 504. A sample notice that can be adapted for different departments and formats is provided in Attachment A. Metropolitan Government will provide this information on an ongoing basis. Among the ways in which this information can be provided are newspaper advertisements, inclusion with applications, postings at all program sites, program handbook, and posting at facilities and program sites. Alternative formats for providing this information may include radio, reading services, large print notices, closed-captioned television advertisements, audiotape, ASCII computer diskettes or Braille.

**C. Grievance Procedure**

13. Metropolitan Government will adopt, publish and maintain a grievance procedure providing for prompt and equitable resolution of grievances arising under Title II and Section 504. The grievance procedure will incorporate the following four components: (a) a detailed description of the procedure for submitting a grievance; (b) a two-step review process that incorporates due process standards and allows for appeal; (c) reasonable time frames for review and resolution of the grievance; and (d) good record-keeping for all complaints submitted and documentation of steps taken towards resolution. The sample procedures which can be adapted by Metropolitan Government for its purposes are provided in Attachment B. Metropolitan Government's ADA

Coordinator (and departmental ADA coordinators) will be responsible for receiving and investigating grievances brought pursuant to this grievance procedure.

D. Self-Evaluation and Implementation of Non-Discriminatory Policies

14. Metropolitan Government agrees to do the following:

- (a) conduct a comprehensive self-evaluation of its current services, policies and practices, and the effects thereof, in order to determine whether they meet the requirements of the ADA and Section 504;
- (b) immediately after completing the evaluation referenced in paragraph 14(a), each department shall begin implementing any necessary non-structural modifications to such services, policies, and practices. Any necessary non-structural modifications shall be completed as provided herein;
- (c) provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments; and
- (d) maintain on file and make available for public inspection, for at least three (3) years following completion of the self-evaluation:
  - (i) a list of the interested persons consulted;
  - (ii) a description of the areas examined and any problems identified; and
  - (iii) a description of any modifications made.

15. Lists of Departments, Covered Programs, and Facilities. Within ninety (90) days of the effective date of this Agreement, Metropolitan Government will develop and provide the Department of Justice with the following three lists:

- (a) A list of all of Metropolitan Government's departments and other major organizational units, services, programs and activities. This list will be identified as "Metropolitan Government's Departments, Programs, Services, and Activities List."
- (b) A list identifying which of these departments, services, programs and activities listed in the preceding paragraph that Metropolitan Government intends to make subject to this Agreement. This list will be identified as "Metropolitan Government's Programs, Services, and Activities Subject to the Agreement."
- (c) A list of all of buildings, facilities and other properties owned or leased by Metropolitan Government which house programs, services or activities offered to the public. This list will be identified as "Metropolitan Government's Facilities Inventory."

These three lists will be attached to and become part of this Agreement.

16. Effective Communication Policies. Within sixty (60) days of the effective date of this Agreement, Metropolitan Government will adopt the effective communication policies provided in Attachments D, E, and F as formal Metropolitan Government policies for effective communication in its general programs, activities and services, including law enforcement and emergency 9-1-1 services, respectively. Attachment D will be included in any departmental policy manual, or in the Metropolitan Government's employee handbook, and will be distributed to every Government employee within thirty (30) days of adoption of the policy. Attachment E will be included in the police department's manual within thirty (30) days of the date of the adoption. Within sixty (60) days of the effective date of this Agreement, Metropolitan Government will immediately take all necessary steps to bring the 9-1-1 system into compliance with the Direct, Effective 9-1-1 Policy (Attachment F).

17. Review of Existing Policies and Practices. On or before December 31, 2001, Metropolitan Government will have completed a comprehensive review of both its written policies and the actual operating practices used in the programs, services and activities subject to this Agreement, to determine whether they meet the requirements of the ADA and Section 504, and will have implemented any necessary non-structural modifications. Specifically, Metropolitan Government will review its policies and practices in the following areas:

- (a) General. Metropolitan Government will ensure that people with disabilities are not discriminated against in the areas of equal opportunity, integration, eligibility, methods of administration, location of facilities, licensing certification, and surcharges;
- (b) Effective Communication. Metropolitan Government will assess its current ability to provide appropriate auxiliary aids and services whenever necessary to ensure effective communication with people with disabilities in individualized programs, services, or activities.

18. Involvement of Persons with Disabilities. Metropolitan Government will provide an opportunity to interested persons to submit comments during the self-evaluation as described in paragraph 17.

19. Self-Evaluation Report. Metropolitan Government will prepare a report identifying the modifications to policies and practices it has implemented in accordance with paragraphs 14(d)(iii) and 17. This report shall be identified as "Policy and Practice Modifications Report", and shall be forwarded to the Department of Justice as soon as it

is completed, but no later than December 31, 2001, and shall be attached to and become a part of this Agreement.

20. Program Access. Metropolitan Government agrees not to deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. Metropolitan Government also agrees to ensure that its programs, activities, and services, will be readily accessible to and usable by individuals with disabilities. Metropolitan Government may achieve program accessibility by a number of structural and nonstructural methods. When choosing a method of providing program access, Metropolitan Government agrees to give priority to the one that results in the most integrated setting appropriate to encourage interaction among all users, including individuals with disabilities.

21. New Construction and Alterations Requirements. This Agreement will not affect Metropolitan Government's compliance with the applicable Title II and Section 504 requirements that new construction and alterations be made readily accessible.

22. Time Periods for Achieving Program Accessibility. Metropolitan Government agrees to obtain architectural survey reports of all buildings, facilities and other property that house its programs, services and activities. These architectural surveys will identify, in detail, any failure of these buildings to comply with the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG), as set forth in 28 C.F.R. Part 36, App. A. Based upon these architectural survey reports and the structural barriers identified therein, Metropolitan Government will have consultants evaluate each of the programs housed in these buildings to determine the most efficient method of providing program accessibility. Each of the reports identified in subparagraphs (a) through (c) below will be forwarded to the Department of Justice as soon as they are complete, and will be attached to and made part of this Agreement.

- (a) On or about May 31, 2000, Metropolitan Government provided to the Department of Justice architectural surveys of ten (10) buildings that Metropolitan Government has identified as housing programs that are most frequently accessed by the public. These buildings are: The Metropolitan Courthouse; the Ben West Building; the Stahlman Building; the Criminal Justice Center; Howard School Administrative Complex; Lentz Public Health Center; 222 Building; the Centennial Sportsplex; the Planning Commission Building; and the Municipal Auditorium. These survey reports will be identified as Architectural Survey Reports 1.
- (b) By November 30, 2000, Metropolitan Government will obtain architectural surveys of another seventy-five (75) buildings housing federally-funded programs. A list of these buildings will be identified as "Metropolitan Government's Additional 75 Buildings," and will be forwarded, attached to and made part of this Agreement within thirty (30) days of the effective date of this

Agreement. These survey reports will be identified as "Architectural Survey Reports 2."

- (c) By December 31, 2001, Metropolitan Government will obtain architectural survey reports and policy and practice modifications reports with respect to any other buildings, facilities or other properties that house the programs covered under this Agreement. These buildings will be listed as part of the list provided for in paragraph 15(c) of this Agreement. These remaining reports will be identified as "Architectural Survey Report 3".

E. Preparation of Transition Plans

23. Time Period for Draft Transition Plans. If structural modifications are required to achieve program accessibility, Metropolitan Government will send the Department of Justice a draft transition plan by December 31, 2002. Any structural modifications required for the ten buildings listed in paragraph 22(a) shall be completed as expeditiously as possible, but in any event no later than December 31, 2003. For those structural modifications required in the remainder of the buildings listed in paragraph 15(c), the Metropolitan Government will make a good faith effort to complete the modifications before December 31, 2003, but, in any event, shall complete all structural modifications by December 31, 2005.

24. Elements of a Draft Transition Plan. A draft transition plan will contain at a minimum--

- (a) A list of the physical barriers in the Metropolitan Government's facilities that limit the accessibility of its programs, activities, or services to individuals with disabilities;
- (b) A detailed outline of the methods to be utilized to remove these barriers and make the facilities accessible;
- (c) The schedule for taking the necessary steps to achieve compliance with Title II and Section 504. If the time period for achieving compliance is longer than one year, the plan should identify the interim steps that will be taken during each year of the transition period; and,
- (d) The name of the official responsible for the plan's implementation.

25. Draft Transition Plan-Available for Public Inspection. Metropolitan Government will make a copy of the draft transition plan available for public inspection.

26. Final Agreements. Within thirty (30) days after the Department of Justice's receipt of a draft transition plan, the Department of Justice and the Metropolitan Government will commence negotiations to enter a final agreement regarding the draft transition plan. The parties will base a final transition plan on the architectural survey reports, the consultant reports, public comments, and any other information supplied by Metropolitan Government or obtained by the Department of Justice.

27. In consideration of the terms of this Agreement, the Department of Justice will not, during the term of this Agreement, seek to terminate, or support any action to terminate, the federal funding received by Metropolitan Government.

28. This Agreement will terminate when the parties agree that Metropolitan Government has fully performed its obligations under the Agreement, or when the parties

agree to supplant this Agreement with a subsequent agreement, or by December 31, 2005, whichever comes first.

29. This Agreement is limited to the compliance activities identified herein and does not purport to remedy any other violations of the ADA, Section 504 or other Federal law, or to absolve Metropolitan Government of liability for any past violations of these statutes. The Agreement does not affect Metropolitan Government's continuing responsibility to comply with all aspects of the ADA and Section 504, an obligation which remains separate from and independent of this Agreement. To the extent that Metropolitan Government may fail to comply with any provision of the ADA or Section 504, it may not claim as a defense its good faith reliance on any act performed or statement made by the Department of Justice or any architect or consultant which it elects to employ pursuant to this Agreement.

30. By entering into this Agreement, Metropolitan Government does not thereby admit to any liability for violations of the ADA, Section 504, or any other federal law, and the Department of Justice does not admit to the merit of any defense that may be raised by Metropolitan Government with respect to its obligation to comply with the ADA, Section 504 or any other Federal law. The technical assistance provided to Metropolitan Government by the Department of Justice pursuant to this Agreement will not be construed to bind the Department of Justice to any interpretation of the ADA or Section 504.

31. Failure by either party to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision herein will not be construed as a waiver of the other party's right to enforce other deadlines and provisions of this Agreement.

32. If at any time either party desires to modify any portion of this Agreement because of changed conditions making performance impossible or impractical or for any other reason, it will promptly notify the other party in writing, setting forth the facts and circumstances thought to justify modification and the substance of the proposed modification. The party requesting modification will also provide a proposed alternative provision. The proposed modification will not take effect until the other party approves it in writing. The parties will not unreasonably withhold or delay written approval.

33. The Department of Justice may review Metropolitan Government's compliance with this Agreement at any time. Metropolitan Government will submit written compliance reports to the Department of Justice every ninety (90) days during the term of this Agreement. Beginning October 31, 2000, these compliance reports will summarize the actions Metropolitan Government has taken pursuant to this Agreement, and include exhibits such as photographs, architectural plans, published notices, and copies of policies.

34. If either party believes that the other party has violated the Agreement, that party will so notify the other party in writing. The parties will attempt to resolve

informally any disputes that may occur under this Agreement for a period of sixty (60) days. If the parties are unable to reach agreement by the end of this period, either party may elect to institute a civil action in the United States District Court for the Middle District of Tennessee seeking to enforce the terms of this Agreement.

35. Notices to Metropolitan Government will be made in writing and sent by certified mail to:

Karl F. Dean, Director of Law  
Metropolitan Government of Nashville and Davidson County  
Department of Law  
204 Metropolitan Courthouse  
Nashville, TN 37201

Notices to the Department of Justice will be made in writing and sent by certified mail to:

Robert J. Mather, Trial Attorney  
M. Christine Fotopulos, Trial Attorney  
United States Department of Justice  
Civil Rights Division  
Disability Rights Section  
P.O. Box 66738  
Washington, D.C. 20035-6738

36. This Agreement is a public document. Upon request, the Department of Justice may make available to any person a copy of this document.

37. The person signing this document for Metropolitan Government represents that he or she is authorized to bind Metropolitan Government to this Agreement.

This Space Is Intentionally Left Blank.

38. The effective date of this Agreement is the date of the last signature below.

For Metropolitan Government of  
Nashville and Davidson County,  
Tennessee

By: \_\_\_\_\_  
BILL PURCELL,  
Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
BETSY WALKUP  
Chairperson of the Metropolitan  
Board of Public Education

Date: \_\_\_\_\_

By: \_\_\_\_\_  
KARL DEAN,  
Director of Law

Attorney  
Metropolitan Government  
Metropolitan Department of Law  
Room 204, Metro Courthouse  
Nashville, TN 37201-5099  
(615) 862-6341

Date: \_\_\_\_\_

Attachments

For the United States:

\_\_\_\_\_  
BILL LANN LEE,  
Acting Assistant Attorney General  
for Civil Rights

By: \_\_\_\_\_  
JOHN L. WODATCH, Chief  
RENEE M. WOHLNHAUS, Deputy Chief  
ROBERT J. MATHER, Trial Attorney  
M. CHRISTINE FOTOPULOS, Trial

Disability Rights Section  
Civil Rights Division  
U.S. Department of Justice  
P.O. Box 66738  
Washington, DC 20035-6738  
(202) 307-2236  
(202) 305-7475

Date: \_\_\_\_\_

## ATTACHMENT A

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### SAMPLE NOTICE OF ADA REQUIREMENTS

Metropolitan Government of Nashville and Davidson County does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. The Metropolitan Government does not discriminate on the basis of disability in its hiring or employment practices.

This notice is provided as required by Title II of the Americans with Disabilities Act of 1990.

Questions, concerns, complaints, or requests for additional information regarding the ADA may be forwarded to the Metropolitan Government's designated ADA Coordinator.

Name:

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Title:

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Office Address:

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Phone Number: \_\_\_\_\_ Voice: \_\_\_\_\_ TTY: \_\_\_\_\_

Days/Hours Available:

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Individuals who require auxiliary aids and services for effective communication in programs, activities, and services of the Metropolitan Government are invited to make their requirements and preferences known to the ADA Coordinator.

This notice is available in large print, on audio tape, and in Braille, from the ADA Coordinator.

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## **ATTACHMENT B**

### **SAMPLE METROPOLITAN GOVERNMENT GRIEVANCE PROCEDURE**

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act. It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in employment practices and policies or the provision of services, activities, programs, or benefits by the Metropolitan Government.

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date, and description of the problem. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint, will be made available for persons with disabilities upon request.

The complaint should be submitted by the grievant and/or his/her designee as soon as possible but no later than 60 calendar days after the alleged violation to:

(Name of ADA coordinator)

(Phone number)

(Address)

Within 15 calendar days after receipt of the complaint, (Name of the ADA coordinator) will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after meeting, (Name of the ADA coordinator) will respond in writing, and, where appropriate, in a format accessible to the complainant, such as large print, Braille, or audio tape. The response will explain the position of the Metropolitan Government and offer options for substantive resolution of the complaint.

If the response by (Name of the ADA coordinator) does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision of the ADA coordinator within 15 calendar days after receipt of the response to the Mayor or his or her designee.

Within 15 calendar days after receipt of the appeal, the mayor or his or her designee will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting the mayor or his or her designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by (Name of ADA coordinator), appeals to the Mayor or his or her designee, and responses from the ADA coordinator and Mayor or his or her designee will be kept by the Metropolitan Government for at least three years.

## **ATTACHMENT C**

### **SAMPLE ADA EMPLOYMENT POLICY**

It is the policy and practice of the Metropolitan Government of Nashville and Davidson County to comply fully with the Americans with Disabilities Act and ensure equal opportunity in employment for all qualified individuals with persons. The Metropolitan Government is committed to ensuring nondiscrimination in all terms, conditions, and privileges of employment. All employment practices and activities, whether provided or conducted by the Metropolitan Government or another entity on our behalf, will be conducted on a nondiscriminatory basis.

Recruiting, advertising and job application procedures have been reviewed and provide persons with disabilities meaningful employment opportunities. Upon request, applications are available in alternative, accessible formats, as is assistance in completing the application. Pre-employment inquiries are made only regarding an applicant's ability to perform the duties of the position, not any disabling condition.

Pre-employment physical examinations are required only for those positions in which there is bona fide job-related physical requirement, and are given to all persons entering the position only after conditional job offers. Medical records will kept separate and confidential.

Reasonable accommodation is available to all employees and applicants. Work sites will be accessible. All employment decisions are based on the merits of the situation in accordance with defined criteria, not the disability of the individual.

Qualified individuals with disabilities are entitled to equal pay and other forms of compensation (or changes in compensation) as well as in job assignments, classifications, organizational structures, position descriptions, lines of progression and seniority lists. Leaves of all types will be available to all employees on an equal basis.

All fringe benefits, whether provided or administered directly by the Metropolitan Government or another entity on our behalf, must be accessible to persons with disabilities. Training, apprenticeship programs, conferences, professional meetings, as well as financial support and leave for them will be available to all employees. Recreational and social activities sponsored by the Metropolitan Government will be accessible to all employees.

The Metropolitan Government is also committed to not discriminating against any qualified employee or applicant because he or she is related to or associated with a person with a disability. The Metropolitan Government will follow any state or local law that provides individuals with disabilities greater protection than the Americans with Disabilities Act.

This policy is neither exhaustive nor exclusive. The Metropolitan Government is committed to taking all other actions necessary to ensure equal employment opportunity for persons with disabilities in accordance with the ADA and all other applicable federal, state and local laws.

## **ATTACHMENT D**

### **EFFECTIVE COMMUNICATION WITH INDIVIDUALS WITH DISABILITIES IN METROPOLITAN GOVERNMENT PROGRAMS AND SERVICES**

Policy. It is the policy of Metropolitan Government of Nashville and Davidson County to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others. The Metropolitan Government will furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a program, service, or activity conducted by the Metropolitan Government. In determining what type of auxiliary aid or service is necessary, the Government will give primary consideration to the requests of the individual with disabilities.

Auxiliary aids and services. "Auxiliary aids and services" includes 1) qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments; and 2) qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments.

Notification. A list of the Department contact persons is attached to this notice. If you do not know which department is sponsoring or responsible for providing the program or service that requires the provision of auxiliary aids or services to ensure effective communication, please contact the Metropolitan Government ADA Coordinator, at [telephone number and address].

Requests for auxiliary aids or services should be made to the public in advance of the meeting, hearing or other program, service, or activity provided by the Government. For public meetings and hearings, the ADA contact person should be notified at least one week in advance. For on-going services and programs, the ADA contact person should be notified at least 48 hours in advance. For emergencies or urgent requests, the responsible ADA contact person or the Metropolitan Government ADA Coordinator should be notified immediately. The best effort to fulfill the request will be made.

Government Response. When an auxiliary aid or service is required to ensure effective communication, the Government will provide an opportunity for an individual with disabilities to request the auxiliary aid or service of their choice and will give primary consideration to the choice expressed by the individual. "Primary consideration" means that the Government will honor the choice, unless it can show that another equally effective means of communication is available, or that use of the means chosen would result in a fundamental alteration in the service, program, or activity or in undue financial

or when the responsible ADA contact person is deciding whether an alternative means of communication will ensure effective communication, the ADA contact person will consult with the individual with a disability to identify the nature of the requirement for an auxiliary aid or service, that is, in what ways effective communication can be achieved with the individual with a disability in the context of the Government program, service, or activity. The ADA contact person may ask the individual with a disability for technical assistance and information on how to obtain a particular auxiliary aid or service.

Within 48 hours after the request, the ADA contact person will, in writing, notify the requesting individual with a disability of the proposed auxiliary aid or service to be provided. A copy of the proposal will be sent to the Metropolitan Government ADA Coordinator.

Grievance procedures. If the requesting individual with a disability is dissatisfied with the ADA contact person's proposed auxiliary aid or service, the individual is encouraged to file a grievance with the Metropolitan Government ADA Coordinator. The Coordinator will promptly contact the individual in person or by telephone and attempt to resolve the grievance within one week.

Attachment--List of Department Contact Persons

**ATTACHMENT E**

**METROPOLITAN GOVERNMENT POLICE DEPARTMENT**

**GUIDELINES FOR TRAINING ON EFFECTIVE COMMUNICATION IN**

**POLICE SITUATIONS INVOLVING INDIVIDUALS WITH HEARING**

**IMPAIRMENTS**

Successful police contact with citizens is characterized by effective communication between the parties whether it is a suspect, victim, or complainant with whom the officer is talking. As such, police officers encountering an individual with hearing impairment should use appropriate auxiliary aids and services whenever necessary to ensure effective communication with the individual.

Auxiliary aids and services include qualified interpreters, written materials, note pads, and other effective methods of making aurally delivered materials available to individuals with hearing impairments.

When an auxiliary aid or service is required to ensure effective communication, the Metropolitan Government Police Department must provide an opportunity for individuals with hearing impairments to request the auxiliary aids and services of their choice and must give primary consideration to the choice expressed by the individuals. "Primary consideration" means that the Metropolitan Government Police Department must honor the choice, unless it can show that another equally effective means of communication is available, or that use of the means chosen would result in a fundamental alteration in the nature of its service, program, or activity or in undue financial and administrative burdens.

Police contact with citizens occurs most frequently during routine traffic stops. In situations involving drivers who are deaf and use sign language for communication, the officer should use appropriate sign language to initiate the exchange with the driver and should explain in writing the necessity for a stop and citation if the driver is to be charged with a traffic violation. The officer may not ask a family member or friend of the driver to interpret.

These guidelines address only those situations where a police officer, after consulting with the individual with a hearing impairment, determines that the services of a qualified interpreter are necessary to ensure effective communication.

**A. Arrest Upon Probable Cause Without An Interview**

In circumstances where an individual without a hearing impairment would have been arrested on probable cause without an interview, then a suspect with a hearing

impairment in the same situation usually does not need to be provided with a qualified interpreter.

However, a qualified interpreter may be required if an officer is unable to convey to the arrestee the nature of the criminal charges by communicating on a note pad or by using another means of communication. The arrestee should be transported to a holding cell where either the arresting officer or the transporting officer can convey the information through the interpreter when he or she arrives.

#### B. Interview Needed to Arrest Individual With A Hearing Impairment

If a police officer needs to interview a suspect with a hearing impairment to determine if there is probable cause to make an arrest, a qualified interpreter must be provided if the written communication is ineffective. When the services of a qualified interpreter are required to provide effective communication, but the officer cannot wait until a qualified interpreter arrives because the officer has to respond to another more urgent call, the following procedures apply:

- 1) If the investigation does not involve a serious offense, the officer must postpone the interview and possible arrest until the officer can return to the scene when a qualified interpreter is present. If this is not possible, the officer must document his or her investigation as completely as possible and file the appropriate report.
- 2) If the investigation involves a serious offense, the officer, before leaving the scene, must contact the appropriate Investigations Division supervisor and advise the supervisor of the case. The supervisor will determine if a detective will be called in to wait for a qualified interpreter. If not, the officer must document his or her investigation as completely as possible and file the appropriate report.

#### C. Interrogating An Arrestee With A Hearing Impairment

If an officer cannot effectively inform the arrestee of the Miranda warnings without the use of an interpreter, then the officer must secure the services of a qualified interpreter in order to communicate accurately the warnings to the arrestee prior to any interrogation.

An officer seeking to interrogate an arrestee with a hearing impairment must obtain the services of a qualified interpreter prior to any interrogation whenever an interpreter is needed for effective communication. If exigent circumstances do not permit a delay in the interrogation of the arrestee, if an interpreter cannot be located within a reasonable period of time (which should occur very infrequently), if written communication between the officer and the arrestee was effective in conveying an understanding of the Miranda warnings, or if the arrestee specifically declines the opportunity to communicate through an interpreter, the officer may proceed with the

interrogation by using a note pad. However, if written communication becomes ineffective, for example, because the factual pattern is complex, because the arrestee is having difficulty communicating without an interpreter, or because the arrestee chooses to discontinue the interrogation, the officer must discontinue the interrogation and wait until a qualified interpreter is present before continuing the interrogation. In most instances a qualified interpreter will be available and the interrogation will not be delayed.

#### D. Issuance of Appearance Ticket

In circumstances in which an individual without a hearing impairment would be issued an appearance ticket without being questioned by the investigating officer, then a suspect with a hearing impairment in the same situation does not need to be provided with a qualified interpreter. If an officer has stopped a suspect for committing a non-criminal infraction and if the officer is unable to convey to the violator the nature of the non-criminal infraction by communicating on a note pad or by using another means of communication, then the officer should use his or her discretion as to whether to call a qualified interpreter to the scene or whether to issue a warning rather than a citation.

#### E. Interviewing A Victim or Critical Witness With A Hearing Impairment

If an officer is able to communicate effectively by writing questions on a note pad and having the victim or witness with a hearing impairment write his or her responses, then the officer may proceed with the interview using a note pad. However, if an investigating officer is unable to communicate effectively with a victim or critical witness by using a note pad or some other means of communication other than a qualified interpreter, then the investigating officer must provide the victim or critical witness with a qualified interpreter. If the investigating officer cannot wait until a qualified interpreter arrives because the officer has to respond to another more urgent call, the following procedures apply:

- 1) If the investigation does not involve a serious offense, then (a) the officer can have a qualified interpreter dispatched to the victim's or critical witness's location and request the dispatcher re-contact the officer when the interpreter arrives. If a qualified interpreter is unable to respond or if the officer cannot return to the scene, the officer must document his or her investigation as completely as possible and file the appropriate report; or (b) the officer can ask the victim or critical witness to come voluntarily to the section office when a qualified interpreter is available. At that time, the investigating officer can return to the station to complete the investigation. If a qualified interpreter is unable to respond or if the officer cannot return to the station, the officer must document his or her investigation as completely as possible and file the appropriate report.
- 2) If the investigation does involve a serious offense and if the victim or witness with a hearing impairment is critical to establishing probable

cause for an arrest or for completing the investigation, then the investigating officer, before leaving the scene, must contact his or her supervisor and advise the supervisor of the case. The supervisor will determine if an investigator will be called in to wait for a qualified interpreter. If the supervisor determines that an investigator will not be responding; and if neither option (1) (a) nor (1)(b) above is available, then the officer may leave the victim(s) or witness(es) at the scene. The investigating officer must then document his or her investigation as completing as possible and file the report.

F. Obtaining Qualified Interpreters

Officers will arrange for a qualified interpreter from [a contractor] and request that a qualified interpreter be provided. If the person requests an interpreter other than from the[contractor], the request should be honored if the interpreter is available and qualified.

G. Reports/Evidence

All identifying information on the interpreter must be included in the report, including the interpreters name, the time the interpreter was called, and his/her time of arrival and departure. All written questions and responses between and among police officers and persons with hearing impairments must be treated as evidence and handled accordingly.

## **ATTACHMENT F**

### **METROPOLITAN GOVERNMENT'S POLICY ON ACCESS TO 9-1-1 SERVICES**

#### **I. Introduction**

Dialing 9-1-1 is the most familiar and effective way Americans have of finding help in an emergency. The Americans with Disabilities Act (ADA) requires all Public Safety Answering Points (PSAPs) to provide direct, equal access to their services for people with disabilities who use teletypewriters (TTYs), which are also known as 'telecommunications devices for the deaf (TDDs)."

#### **II. Direct, Equal TTY Access**

##### **A. General Requirements for Telephone Emergency Service Providers**

The ADA regulation requires 9-1-1 or other telephone emergency service providers to provide TTY users with: direct access; and an opportunity to benefit from the emergency services that is equal to the opportunity afforded others.

Direct access means that PSAPs can directly receive TTY calls without relying on an outside relay service or third-party services.

Equal access means that the telephone emergency services provided for TTY users are as effective as those provided for persons who make voice calls, in terms of:

- response time;
- response quality;
- hours of operation; and
- all other features offered (e.g., automatic number identification, automatic location identification, automatic call distribution).

Direct, equal access requires PSAPs to have the appropriate equipment to communicate with people who use TTYS. It also requires them to use the proper procedures and practices when TTY calls are received.

##### **B. Equipment**

In order to afford equal access to TTY users, every call-taking position within a PSAP must have its own TTY or TTY-compatible equipment. PSAPs must have systems that enable call takers to handle TTY calls as properly, promptly, and reliably as voice calls.

##### **C. Other Requirements for TTY Equipment**

## Maintenance and Back-Up

The ADA regulation contains a specific provision requiring that covered entities maintain their accessibility features and equipment in operable working condition. In addition to this specific maintenance requirement, the ADA's equal access requirement obligates PSAPs to implement equally effective procedures for maintenance and back-up capability for TTY equipment as they provide for voice telephone equipment.

## Switching Between Voice and TTY Modes

All call takers must have the capability to switch back and forth easily from TTY mode to voice mode during the same call. This capability is necessary especially for silent calls, since call takers are required to first query the line by voice and then quickly switch to query the line by TTY. This capability is also necessary for VCO and HCO, which are described below. VCO and HCO shorten the lengths of calls that would otherwise be conducted exclusively by typing. Call takers who use stand-alone TTYs can switch from TTY mode back to voice mode simply by removing the telephone handset from the TTY couplers. TTY-compatible consoles for call takers should have built-in switching capability.

VCO is voice carryover. It is a communication hybrid of TTY and voice. VCO allows a person with hearing loss to speak directly to the call taker and read the response that is typed back. Many persons who became deaf or hard of hearing later in life prefer to speak instead of type. They use what is called voice carryover (VCO). With VCO, the caller speaks directly into the phone, and the call taker types back via TTY to the caller. VCO can be accomplished with standard stand-alone TTY equipment simply by having the call taker alternate between listening on the handset when the caller is speaking and placing the handset in the TTY couplers to type a response.

HCO is hearing carryover. People with speech impairments who are not deaf or hard of hearing often prefer HCO. HCO allows them to type their words on a TTY to call takers and hear call takers' spoken responses through their handset. HCO can be accomplished by a call taker using standard stand-alone TTY equipment by alternating speaking into the handset and placing the handset in the TTY when the caller types a response.

## D. Procedures for Handling TTY Calls

In addition to proper equipment, direct, equal access for TTY calls requires that PSAPs use effective procedures for recognizing and responding to TTY calls. Recognizing TTY Calls/Treating Silent, Open Lines as Potential TTY Calls

All call takers must be able to recognize and handle TTY calls properly. There are three types of TTY calls a call taker may receive. Some TTYs emit a recorded spoken announcement to the call taker that a TTY call is being placed, such as "HEARING

IMPAIRED CALLER. USE TTY." Other times, TTY callers may press TTY keys to emit audible tones and more quickly notify the call taker that a TTY call is being placed. Most often, however, a person using a TTY will make a call that is perceived by the call taker as a silent, open line call. This is because the caller's equipment does not recognize that the call has been answered until the call taker sends a TTY response.

The only way for PSAPs to properly identify all TTY calls is for call takers to recognize TTY tones and to query every silent, open line call with a TTY to determine if it is a TTY call after it has been queried by voice.

### Conducting TTY Calls

After TTY calls are recognized, call takers must effectively communicate with callers during the calls. Effective communication by TTY will require call takers to be familiar with the use of TTY equipment and TTY protocols.

E. Training PSAPs must train their call takers to effectively recognize and process TTY calls. Call takers must be trained in the use of TTY equipment and supplied with information about communication protocol with individuals who are deaf or hard of hearing, or who have speech impairments. For instance, callers who use American Sign Language use a syntax that is different from spoken English. In addition, in TTY communication, certain accepted abbreviations are frequently used. A list of some of those abbreviations is attached to this document.

The ADA does not specify how call takers must be trained, but the Department believes that the following are essential to proper training:

Training should be mandatory for all personnel who may have contact with individuals from the public who are deaf, hard of hearing, or who have speech impairments.

PSAPs should require or offer refresher training at least as often as they require or offer training for voice calls, but at a minimum, every six months.

Comprehensive training should include:

- Information about the requirements of the ADA and Section 504 of the Rehabilitation Act for telephone emergency service providers;

- Information about communication issues regarding individuals who are deaf or hard of hearing, or who have speech impairments, including information about American Sign Language;

- Practical instruction on identifying and processing TTY calls, including the importance of recognizing silent TTY calls, using proper syntax,

abbreviations, and protocol when responding to TTY calls and relayed calls; and

Hands-on experience in TTY communications, especially for new call takers, as part of their initial training orientation.

To ensure the effectiveness of training, PSAPs may want to consult the Emergency Access Self-Evaluation program, published as a manual by Telecommunications for the Deaf, Inc., under a Department of Justice grant. The EASE manual, which was reviewed by the Department, can be obtained for a fee by calling TDI at (301) 589-3786 (voice), (301) 589-3006 (TTY), or (301) 589-3797 (FAX).

F. Testing 9-1-1 experience has shown that frequent testing is essential to ensure direct, equal access. Testing call takers and their equipment is also the one of the most effective ways to ensure compliance with the ADA's requirement that accessibility features are maintained in operable working condition. The tests should be designed to ascertain whether TTY equipment functions properly and whether personnel have been adequately trained to recognize TTY calls quickly, to operate TTY equipment, and to conduct TTY conversations.

To test whether call takers have been trained adequately to recognize TTY calls, a PSAP should conduct two types of test calls--silent, open line calls in which no tones are emitted and calls in which the caller introduces the call by transmitting TTY tones. Tests should be unannounced.